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8 MUHAMMAD KHAN,
9 Plaintiff,
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11 v.
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13 M. PAYTON,
14 Defendant.
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17 Case No. 20-cv-03086 BLF (PR)
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**ORDER VACATING LAST COURT
ORDER; RESCREENING FIRST
AMENDED COMPLAINT WITH
AMENDMENT; DISMISSING NON-
COGNIZABLE CLAIMS; ORDER
OF SERVICE AND SETTING
BRIEFING SCHEDULE;
DIRECTING DEFENDANTS TO
FILE DISPOSITIVE MOTION OR
NOTICE REGARDING SUCH
MOTION; INSTRUCTIONS TO
CLERK**

19 Plaintiff, a state prisoner, filed a *pro se* civil rights action pursuant to 42 U.S.C. §
20 1983 against an officer at San Quentin State Prison (“SQSP”). Dkt. No. 1. On June 14,
21 2021, the Court screened the first amended complaint (“FAC”), Dkt. No. 18, and found
22 some cognizable claims, dismissed non-cognizable claims, and granted leave to amend an
23 equal protection claim. Dkt. No. 22. In the alternative, Plaintiff was advised that he may
24 file notice to proceed solely on the cognizable claims identified in the order. *Id.* at 8.
25 Plaintiff was granted three extensions of time to file a second amended complaint
26 (“SAC”), which was filed on July 11, 2022. Dkt. No. 38. However, the Court found the
27 SAC was deficient because it only provided Plaintiff’s causes of actions without a
28 statement of facts in support of his claims; the filing appeared to be a revision of the last

1 few pages of the FAC. Dkt. No. 49 at 2. Therefore, the Court dismissed the SAC with one
2 final opportunity to file a third and final amended complaint. *Id.* at 3.

3 Plaintiff filed a reply to the court's screening order, stating that he is indigent and
4 cannot afford large manilla envelopes and postage to mail out an entire pleading. Dkt. No.
5 50. In the interest of justice, the Court will construe the SAC as an amendment to the
6 FAC, which will remain the operative complaint in this matter. The Court will rescreen
7 the FAC with the amendment, which will replace paragraphs 89, et seq., of the FAC. Dkt.
8 Nos. 18, 38. The Court's screening order of the second amended complaint will be
9 stricken. Dkt. No. 49.

10 11 DISCUSSION

12 A. Standard of Review

13 A federal court must conduct a preliminary screening in any case in which a
14 prisoner seeks redress from a governmental entity or officer or employee of a
15 governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any
16 cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim
17 upon which relief may be granted or seek monetary relief from a defendant who is immune
18 from such relief. *See id.* § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally
19 construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

20 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
21 elements: (1) that a right secured by the Constitution or laws of the United States was
22 violated, and (2) that the alleged violation was committed by a person acting under the
23 color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

24 B. Plaintiff's Claims

25 In the screening order of the first amended complaint, the Court found the following
26 cognizable claims:

27 As the Court previously found, [Dkt. No. 13], liberally construed, Plaintiff

1 states a cognizable claim under the First Amendment for the denial of
2 meals necessary for the free exercise of his religion, *see Ward v. Walsh*, 1
3 F.3d 873, 877 (9th Cir. 1993) (Jewish inmate claiming denial of kosher
4 diet), *cert. denied*, 510 U.S. 1192 (1994); *Moorish Science Temple, Inc. v.*
5 *Smith*, 693 F.2d 987, 990 (2d Cir. 1982) (Muslim inmate claiming denial of
6 proper religious diet), and a cognizable Eighth Amendment claim for the
7 deprivation of food for two days, *see Johnson v. Lewis*, 217 F.3d 726, 731,
8 732-733 (9th Cir. 2000). The Court also finds the amended complaint,
9 liberally construed, states a cognizable due process claim based on the
arbitrary denial of Ramadan meals by Defendant Payton. *See Sandin v.*
Conner, 515 U.S. 472, 484 (1995). The Court will also exercise
supplemental jurisdiction over Plaintiff's state law claims for intentional
infliction of emotional distress and negligent hiring/training/supervising
which are adequately pleaded. *See United Mine Workers v. Gibbs*, 383
U.S. 715 (1966).

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11 Dkt. No. 22 at 4-5.

12 The Court found Plaintiff's allegations failed to state an equal protection claim, i.e.,
13 that the treatment he received was dissimilar to that received by other inmates "of other
14 faiths." *Id.* at 5-6. Plaintiff was granted leave to amend this claim. *Id.* at 6. The Court
15 also dismissed Plaintiff's RLUIPA¹ claim for damages and a state claim under the
16 California Government Code § 19572 for failure to state a claim for relief. *Id.* at 6-7.

17 In the amendment, Plaintiff has again included the RLUIPA claim against only
18 SQSP, but this time asserts that he is seeking only declaratory relief and no money
19 damages. *Id.* at 4. Nevertheless, the allegations are still insufficient to state a claim
20 against the prison. Section 3 of RLUIPA provides: "No government shall impose a
21 substantial burden on the religious exercise of a person residing in or confined to an
22 institution, as defined in section 1997 [which includes state prisons, state psychiatric
23 hospitals, and local jails], even if the burden results from a rule of general applicability,
24 unless the government demonstrates that imposition of the burden on that person (1) is in
25 furtherance of a compelling governmental interest; and (2) is the least restrictive means of

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27 ¹ Religious Land Use and Institutionalized Person Act, 42 U.S.C. § 2000cc-1(a).
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1 furthering that compelling governmental interest.” 42 U.S.C. § 2000cc-1(a). The statute
2 applies “in any case” in which “the substantial burden is imposed in a program or activity
3 that receives Federal financial assistance.” 42 U.S.C. § 2000cc-1(b)(1). Here, the
4 deprivation of Ramadan meals for a few days was not caused by the prison’s program or
5 activity but rather the allegedly unconstitutional actions of two employees who failed to
6 provide Plaintiff with the meals to which he was entitled under the prison’s religious diet
7 program. Accordingly, Plaintiff fails to state a RLUIPA claim against SQSP. Leave to
8 amend will not be granted as Plaintiff has already filed an amended complaint. *See Wagh*
9 *v. Metris Direct, Inc.*, 363 F.3d 821, 830 (9th Cir. 2003); *Fedrik v. Bonzelet*, 963 F.2d
10 1258, 1261 (9th Cir. 1992). Furthermore, another amendment would be futile as Plaintiff
11 would not be able to allege different facts to correct this deficiency, and it would create
12 undue delay in this matter which has been pending since 2000. *See Wagh v. Metris Direct,*
13 *Inc.*, 363 F.3d 821, 830 (9th Cir. 2003); *Fedrik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir.
14 1992); *Janicki Logging Co. v. Mateer*, 42 F.3d 561, 566 (9th Cir. 1994). The RLUIPA
15 claim is therefore DISMISSED for failure to state a claim.

16 Plaintiff’s amendment indicates that he no longer wishes to pursue the equal
17 protection claim. Dkt. No. 38 at 15. Accordingly, that claim is now stricken from this
18 action.

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20 CONCLUSION

21 For the reasons state above, the Court orders as follows:

22 1. The Court’s “Order Screening Second Amended Complaint” is VACATED.
23 Dkt. No. 49. Plaintiff’s “second amended complaint” shall be docketed as “Amendment to
24 the First Amended Complaint.” Dkt. No. 38.

25 2. This action shall proceed on the claims under the First Amendment, Eighth
26 Amendment, due process, and state law claims against Defendants Payton and Healy.

27 The RLUIPA claim is DISMISSED with prejudice for failure to state a claim for

1 relief. All other claims are stricken from this action.

2 3. Defendant Payton has already been served in this matter. Dkt. No. 13.

3 Accordingly, only the following defendant at SQSP shall be served:

4 a. **Correctional Officer Healy**

5 Service on the listed defendant(s) shall proceed under the California Department of
6 Corrections and Rehabilitation's (CDCR) e-service program for civil rights cases from
7 prisoners in CDCR custody. In accordance with the program, the clerk is directed to serve
8 on CDCR via email the following documents: the first amended complaint and any
9 attachments thereto, Dkt. No. 18, the amendment, Dkt. No. 38, this order of service, and a
10 CDCR Report of E-Service Waiver form. The clerk also shall serve a copy of this order on
11 the plaintiff.

12 No later than 40 days after service of this order via email on CDCR, CDCR shall
13 provide the court a completed CDCR Report of E-Service Waiver advising the court which
14 defendant(s) listed in this order will be waiving service of process without the need for
15 service by the United States Marshal Service (USMS) and which defendant(s) decline to
16 waive service or could not be reached. CDCR also shall provide a copy of the CDCR
17 Report of E-Service Waiver to the California Attorney General's Office which, within 21
18 days, shall file with the court a waiver of service of process for the defendant(s) who are
19 waiving service.

20 Upon receipt of the CDCR Report of E-Service Waiver, the clerk shall prepare for
21 each defendant who has not waived service according to the CDCR Report of E-Service
22 Waiver a USM-205 Form. The clerk shall provide to the USMS the completed USM-205
23 forms and copies of this order, the summons and the operative complaint for service upon
24 each defendant who has not waived service. The clerk also shall provide to the USMS a
25 copy of the CDCR Report of E-Service Waiver.

26 4. No later than **ninety-one (91) days** from the date this order is filed,
27 Defendants shall file a motion for summary judgment or other dispositive motion with

1 respect to the claims in the complaint found to be cognizable above.

2 a. Any motion for summary judgment shall be supported by adequate
3 factual documentation and shall conform in all respects to Rule 56 of the Federal Rules of
4 Civil Procedure. Defendants are advised that summary judgment cannot be granted, nor
5 qualified immunity found, if material facts are in dispute. If any Defendant is of the
6 opinion that this case cannot be resolved by summary judgment, he shall so inform the
7 Court prior to the date the summary judgment motion is due.

8 b. **In the event Defendants file a motion for summary judgment, the
9 Ninth Circuit has held that Plaintiff must be concurrently provided the appropriate
10 warnings under *Rand v. Rowland*, 154 F.3d 952, 963 (9th Cir. 1998) (en banc). See
11 *Woods v. Carey*, 684 F.3d 934, 940 (9th Cir. 2012).**

12 5. Plaintiff's opposition to the dispositive motion shall be filed with the Court
13 and served on Defendants no later than **twenty-eight (28) days** from the date Defendants'
14 motion is filed.

15 Plaintiff is also advised to read Rule 56 of the Federal Rules of Civil Procedure and
16 *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) (holding party opposing summary judgment
17 must come forward with evidence showing triable issues of material fact on every essential
18 element of his claim). Plaintiff is cautioned that failure to file an opposition to
19 Defendants' motion for summary judgment may be deemed to be a consent by Plaintiff to
20 the granting of the motion, and granting of judgment against Plaintiff without a trial. *See*
21 *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (per curiam); *Brydges v. Lewis*, 18
22 F.3d 651, 653 (9th Cir. 1994).

23 6. Defendants shall file a reply brief no later than **fourteen (14) days** after
24 Plaintiff's opposition is filed.

25 7. The motion shall be deemed submitted as of the date the reply brief is due.
26 No hearing will be held on the motion unless the Court so orders at a later date.

27 8. All communications by the Plaintiff with the Court must be served on

1 Defendants, or Defendants' counsel once counsel has been designated, by mailing a true
2 copy of the document to Defendants or Defendants' counsel.

3 9. Discovery may be taken in accordance with the Federal Rules of Civil
4 Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local
5 Rule 16-1 is required before the parties may conduct discovery.

6 10. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the
7 court informed of any change of address and must comply with the court's orders in a
8 timely fashion. Failure to do so may result in the dismissal of this action for failure to
9 prosecute pursuant to Federal Rule of Civil Procedure 41(b).

10 11. Extensions of time must be filed no later than the deadline sought to be
11 extended and must be accompanied by a showing of good cause.

12 **IT IS SO ORDERED.**

13 **Dated:** _____

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15 BETH LABSON FREEMAN
16 United States District Judge
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